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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,329	08/20/2003	Hoke V. Bullard	B-33152A/GER	6667
1095	7590	03/09/2006	EXAMINER	
NOVARTIS CORPORATE INTELLECTUAL PROPERTY ONE HEALTH PLAZA 104/3 EAST HANOVER, NJ 07936-1080			BLAKE, CAROLYN T	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 03/09/2006

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/644,329  
Filing Date: August 20, 2003  
Appellant(s): BULLARD ET AL.

**MAILED**  
**MAR 09 2006**  
**Group 3700**

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Michael F. Morgan  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed January 6, 2006 appealing from the Office action mailed July 18, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claims 10-15 stand rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al (5,711,759).** The implement (FIGS 1-3) of Smith et al shows all of the claimed structure. It is submitted the implement is capable of being used as a feeding implement, and the transport portion (8) is fully capable of being dipped into solid food as claimed. Further, Smith et al specifically mention (see column 4, lines 9-11) the transport portion (8) can be oval or rectangular in shape (i.e. meets the limitation of at least two substantially flat surfaces).

### **(10) Response to Argument**

The examiner respectfully maintains the position that the invention as claimed is anticipated by the prior art, particularly the applied prior art.

Appellant asserts the Smith et al reference does not disclose a plurality of grooves as claimed. Merriam-Webster Online defines a groove as "a long narrow channel or depression." There is nothing in this definition that prohibits the recessed area between the nodules 12 of the Smith et al reference from being considered or defined as a plurality of grooves; this recessed area comprises a system of long and narrow channels that are depressed from the nodules 12. Therefore, FIGS 1-3 of Smith et al anticipate the claimed invention.

Appellant asserts FIG 11 of Smith et al is a cross-sectional view, and therefore the overall structure for this figure is unknown and does not anticipate the claims.

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However, the claims are rejected based on FIGS 1-3 of Smith et al, and FIG 11 plays no bearing on the rejection.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Conferees:

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